

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN
JOSE MUNICIPAL CODE TO ADD A NEW PART 17 TO
PROHIBIT THE USE OF POLYSTYRENE FOAM
DISPOSABLE FOOD SERVICE WARE BY FOOD
VENDORS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 9.10 of Title 9 of the San Jose Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read as follows:

Part 17

Polystyrene Foam Disposable Food Service Ware

9.10.3200 Definitions.

The definitions set forth in this Section shall govern the application and interpretation of this Part 17.

- A. "Director" means the director of the environmental services department or his or her designee.
- B. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared foods and includes, but is not limited to, plates, cups, bowls, trays, and hinged or lidded containers, also known as clamshells. Disposable food service ware does not include straws, utensils or drink lids.
- C. "Food vendor" means any establishment located in the City of San Jose that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee

shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand.

- D. "Large food vendor" means a food vendor that is part of a chain or franchise of food vendors that have the same name, are substantially identical, and operate in more than one state.
- E. "Polystyrene foam" means the thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques, including but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene foam" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene). Polystyrene foam does not include clear or solid polystyrene known as oriented polystyrene that has not been expanded or blown using a gaseous blowing agent.
- F. "Prepackaged food" means properly labeled processed food sold or otherwise provided by a food vendor that arrives at the premises of the food vendor in a container or wrapper in which the food is wholly encased, enclosed, contained or packaged and is not removed from such container or wrapper (other than an outer container or wrapper that encases, encloses, contains or packages multiple units of the food) before its sale or provision at the premises.
- G. "Prepared food" means food or beverages that are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include uncooked eggs, fish, meat or poultry unless provided for consumption without further food preparation.
- H. "Small food vendor" means a food vendor that is not a large food vendor.

9.10.3210 Polystyrene Foam Disposable Food Service Ware Prohibited.

- A. By January 1, 2014, no large food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food ware service.

- B. By January 1, 2015, no small food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food ware service.
- C. The prohibitions in paragraphs A and B do not apply to prepackaged food.

9.10.3220 Exemptions

- A. Undue hardship. The director may exempt a food vendor from the prohibitions in Section 9.10.3210 on a case-by-case basis for undue hardship. For purposes of this Section, "undue hardship" means (1) situations unique to the food vendor where a suitable alternative to polystyrene foam disposable food service ware does not exist for a specific application; and/or (2) situations where no reasonably feasible available alternative exists to a specific and necessary polystyrene foam product prohibited by this part.
- B. Financial hardship. The director may exempt a food vendor from the prohibitions in Section 9.10.3210 on a case-by-case basis for financial hardship. For purposes of this Section, "financial hardship" means a food vendor has been granted a financial hardship exemption from the payment of business license taxes from the director of finance pursuant to Section 4.76.345 of this code for the calendar year in which the vendor applies for an exemption from the provisions in Section 9.10.3210.
- C. Exemption request.
 - 1. A food vendor seeking an exemption for undue hardship or financial hardship shall submit a written exemption request to the director. The written exemption request shall include all information and documentation necessary for the director to make a finding that imposition of this part would cause an undue hardship or financial hardship as defined in this Section. For purposes of documenting a financial hardship, a food vendor must provide evidence that it has been granted a financial hardship exemption from the city's director of finance pursuant to Section 4.76.345 of this code.

2. The director may require the applicant to provide additional information in order to make a determination regarding the exemption request.
3. The director may grant an exemption request in whole or in part, with or without conditions, for a period of up to one year upon a finding that a food vendor seeking the exemption has demonstrated that strict application of the prohibitions in Section 9.10.3210 would cause undue hardship or financial hardship as defined in this Section.
4. If a food vendor who has been granted an exemption wishes to have the exemption extended, the vendor must re-apply for the exemption thirty (30) days prior to the expiration of the exemption and demonstrate continued undue hardship or financial hardship. Extensions may be granted for a period not to exceed one year.
5. Exemption decisions are effective immediately and are final and not subject to appeal.

SECTION 2. This ordinance shall be effective on January 1, 2014.

PASSED FOR PUBLICATION of title this _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk